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UNITED SCHUTZHUND CLUBS OF AMERICA and

9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

12 ZOLTAN NAGY,

13 Plaintiffs,

14 vs.

15 UNITED SCHUTZHUND CLUBS OF
AMERICA; JIM ALLOWAY, and
16 DOES 1 to 10,

17 Defendants.

CASE NO. 3:19-cv-08459-CRB

DEFENDANT UNITED
SCHUTZHUND CLUBS OF
AMERICA'S NOTICE OF MOTION
AND MOTION TO TRANSFER
VENUE

[Filed concurrently with Memorandum
of Points and Authorities; Declaration
of Vadim Plotsker and [Proposed]
Order]

Judge: Hon. Maxine M. Chesney

Date: December 4, 2020

Time: 9:00 a.m.

Courtroom.: 7, 19th Floor

Trial Date: None Set

23 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

24 PLEASE TAKE NOTICE that on December 4, 2020 at 9:00a.m., or as soon
25 thereafter as may be heard, in Courtroom 7, 19th Floor of the above-entitled court
26 located at 450 Golden Gate Avenue, San Francisco, California, Defendant UNITED
27 SCHUTZHUND CLUBS OF AMERICA (hereinafter "Defendant" or "USCA") will
28 and hereby does move to transfer venue to the United States District Court for the

1 Eastern District of Missouri pursuant to 28 U.S.C. §1404(a) or 1406(a). This Motion
2 is based upon this Notice of Motion and Motion, the Memorandum of Points and
3 Authorities, the Declaration of Vadim Plotsker, the pleadings and papers on file
4 herein, all other matters of which the court must or may take judicial notice, and
5 upon such other and further evidence and argument as may be submitted at or before
6 the hearing on this matter.

7
8 DATED: October 27, 2020

JOHN L. BARBER
JULIE W. O'DELL
LAUREN E. WERTHEIMER
LEWIS BRISBOIS BISGAARD & SMITH LLP

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11
12
13 By: _____

LAUREN E. WERTHEIMER
Attorneys for Defendant UNITED
SCHUTZHUND CLUBS OF AMERICA

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Zoltan Nagy is improperly forum shopping. In 2015, Plaintiff began
4 volunteering with USCA, a nonprofit organization incorporated in Missouri, as a
5 Performance Judge. In May 2019, Plaintiff was a volunteer Performance Judge at
6 the 2019 Working Dog Championship (the “Competition”) taking place over three
7 days in Spencer, Massachusetts. He has filed a lawsuit against USCA regarding his
8 status as volunteer Performance Judge generally, and the alleged conduct that
9 occurred at, and arose from, the Competition specifically. Instead of filing either in
10 Massachusetts, the state where the alleged acts occurred, or Missouri, the state
11 where the sole Defendant is a resident, he filed his lawsuit in the Northern District
12 of California. California has no connection whatsoever to the incident or any of the
13 underlying facts giving rise to Plaintiff’s claims, and the vast majority of the
14 witnesses are located outside of California. Plaintiff is simply attempting to benefit
15 from California’s employment laws.

16 As California’s courts have no interest in hearing this case, the case could
17 have, and should have, been filed in the Eastern District of Missouri. Accordingly,
18 the case should be transferred to the Eastern District of Missouri.

19 **II. FACTUAL BACKGROUND**

20 Defendant USCA is a not-for-profit organization dedicated to protecting and
21 preserving the German Shepherd Dog’s working heritage by hosting conformation
22 shows, breed surveys, and Schutzhund trials. USCA’s sole state of incorporation is
23 Missouri and its only facility, its headquarters, is located in Arnold, Missouri. *See*
24 Declaration of Vadim Plotkser (“Plotsker Decl.”) ¶2 The USCA employs only three
25 individuals, in administrative positions, two of which reside in Missouri and the
26 third in Illinois. *See* Plotsker Decl. ¶9.

27 USCA has six officers—the President, Vice President, Treasurer, Secretary,
28 Director of Judges, and National Breed Warden. *See* Plotsker Decl. ¶4. Of the six

1 officers, one resides in New Hampshire, two in Ohio, two in California, and one in
 2 Idaho. *See Id.* USCA has four Directors at Large, who reside in Indiana, Illinois,
 3 and Georgia. *See Plotsker Decl.* ¶5. Defendant also has a five-person Judges
 4 Committee, of which the five judges reside in New Hampshire, Georgia, New
 5 Jersey, Kentucky, and California. *See Plotsker Decl.* ¶6. Jim Alloway, the USCA
 6 Treasurer, alleged harasser, and former Defendant to this suit¹, has known Plaintiff
 7 for over six years, and prior to this suit, considered him a friend. *See Plotsker Decl.*
 8 ¶12.

9 Plaintiff, a former volunteer Performance Judge and current USCA member,
 10 is a resident of California. *See Complaint* ¶2. During his tenure as a Performance
 11 Judge, he was selected to judge the 2017, 2018, and 2019, Working Dog
 12 Championship Competitions, which took place in New York, Ohio, and Boston,
 13 respectively. *See Plotsker Decl.* ¶7.

14 Plaintiff's Complaint states claims for harassment and discrimination, with
 15 the underlying conduct arising out of the events that occurred at the 2019 Working
 16 Dog Competition that took place in Spencer, Massachusetts from May 2-5, 2019.
 17 *See Complaint* 1 ¶23; *See Plotsker Decl.* ¶14. Plaintiff proffers that all other wage
 18 and hour, and employment-related allegations arise out of conduct or omissions,
 19 related to USCA competitions he judged in "the past three years," which, as stated,
 20 took place in New York, Ohio, and Boston. *See Complaint* ¶21; *See Plotsker Decl.*
 21 ¶13. Plaintiff did not judge any official USCA competitions in the state of
 22 California during his tenure as a Performance Judge. *See Plotsker Decl.* ¶8.

23 In his Complaint, Plaintiff alleges that for the past three years, he was
 24 misclassified by USCA as an independent contractor, and is seeking remedies based
 25 on corresponding protections under the law. *See Complaint* ¶¶19-22. Additionally,
 26

27 ¹ Jim Alloway was dismissed on October 7, 2020. *See* Docket No. 48.

1 Plaintiff alleges that generally, and during the Competition, he was harassed and
 2 discriminated against based on his national origin. *See* Complaint ¶25. Specifically,
 3 Plaintiff alleges that at the Competition, Jim Alloway “criticized the manner in
 4 which Plaintiff was doing his job. . . .” and told Plaintiff he would “never work as a
 5 judge ‘in this country’ again.” *See* Complaint ¶24. Plaintiff alleges that he was
 6 retaliated against, in the form of a one-year suspension of his Judge’s license, for
 7 making internal complaints of discrimination and harassment. *See* Complaint ¶37.

8 In Plaintiff’s Complaint, he names Jim Alloway (Treasurer, resident of Ohio)
 9 and Vadim Plotsker (President, resident of New Hampshire), as critical witnesses.
 10 *See* Complaint¶21; *See* Plotsker Decl. ¶10. Additionally, the allegedly retaliatory
 11 disciplinary charges were brought, in part by by Don Yelle and Sean Murphy, two
 12 individuals working as “Helpers” at the Competition, and residents of Connecticut
 13 and Michigan, respectively. *See* Plotsker Decl. ¶16. Finally, Plaintiff judged the
 14 Competition alongside two other Performance Judges, Ann Marrie Chaffin and
 15 Raino Fluegge, who reside in Colorado and Canada, respectively. *See* Plotsker Decl.
 16 ¶15.

17 **III. LEGAL ARGUMENT**

18 **A. THE COURT SHOULD TRANSFER THE ACTION UNDER 28** 19 **U.S.C. §1406(A) AND §1391**

20 28 U.S.C. §1406(a) provides that a district court of a district in which is filed
 21 a case laying venue in the wrong division or district shall. . . if it be in the interest of
 22 justice, transfer such case to any district or division in which it could have been
 23 brought.” 28 U.S.C. §1406(a). Under 28 U.S.C. §1391, venue is proper in either (1)
 24 a judicial district in which any defendant resides, if all defendants are residents of
 25 the State in which the district is located; (2) a judicial district in which a substantial
 26 part of the events or omissions giving rise to the claim occurred, or a substantial part
 27 of property that is the subject of the action is situated; or (3) if there is no district in
 28 which an action may otherwise be brought as provided in this section, any judicial

1 district in which any defendant is subject to the court's personal jurisdiction with
2 respect to such action. 28 U.S.C. §1391.

3 **1. Eastern District of Missouri is the Proper Venue under 28**
4 **U.S.C. §1391(1)**

5 Where, as here, a corporate entity is a defendant, that entity resides "in any
6 judicial district in which such defendant is subject to the court's personal
7 jurisdiction with respect to the civil action in question...." 28 U.S.C. § 1391(c)(2).
8 Defendant's headquarters, and only office, is in the Eastern District of Missouri,
9 which thus has personal jurisdiction over Defendant. Additionally, Defendant's sole
10 state of incorporation is Missouri.

11 Moreover, no part of the events or omissions giving rise to the claim occurred
12 in California and there is no property tied to this action. *See* Complaint, generally.
13 The events or omissions giving rise to the claim occurred both in Massachusetts,
14 where the Competition occurred, and in Missouri, where Defendant is
15 headquartered. *See* Complaint ¶21; *See* Plotsker Decl. ¶¶3, 14. Venue is proper in
16 Missouri or Massachusetts. *See* 28 U.S.C § 1391(b)(1).

17 There is no relation to California that would establish venue is proper in
18 California under any provision of Section 1391(b)(1). Although Plaintiff may be a
19 resident of California, his residency is irrelevant for purposes of determining proper
20 venue under 28 U.S.C. § 1391.

21 **B. IN THE ALTERNATIVE, THE COURT SHOULD TRANSFER THE**
22 **ACTION UNDER 28 U.S.C. §1404(A)**

23 A motion to transfer venue may be brought pursuant to 28 U.S.C. § 1404(a)
24 which provides that "for the convenience of parties and witnesses, in the interest of
25 justice, a district court may transfer any civil action to any other district or division
26 where it might have been brought...." 28 U.S.C. § 1404(a).

27 "Congress, by the term 'for the convenience of parties and witnesses, in the
28 interest of justice,' intended to permit courts to grant transfers upon a lesser showing

1 of inconvenience” than the showing required to obtain dismissal under the doctrine
 2 of forum non conveniens. *Norwood v. Kirkpatrick*, 349 U.S. 29, 32, 75 S. Ct. 544,
 3 546 (1955). “Section 1404(a) is intended to place discretion in the district court to
 4 adjudicate motions for transfer according to an ‘individualized, case-by-case
 5 consideration of convenience and fairness.’” *Stewart Org., Inc. v. Ricoh Corp.*, 487
 6 U.S. 22, 29, 108 S. Ct. 2239, 2244 (1988) [quoting *Van Dusen v. Barrack*, 376 U.S.
 7 612, 622 (1964)].

8 Moreover, “a motion to transfer venue for convenience pursuant to 28 U.S.C.
 9 § 1404(a) does not concern the issue ‘whether and where’ an action *may* be properly
 10 litigated. It relates solely to the question where, among two or more proper forums,
 11 the matter *should* be litigated to best serve the interests of judicial economy and
 12 convenience to the parties.” *Injen Tech. Co., Ltd. v. Advanced Engine Mgmt., Inc.*,
 13 270 F.Supp.2d 1189, 1193 (S.D. Cal. 2003) [emphasis in original; citing *Van Dusen*
 14 *v. Barrack*, 376 U.S. 612, 639, 84 S. Ct. 805, 11 L. Ed. 2d 945 (1964), for the
 15 proposition that a transfer of venue is simply “a change of courtrooms”]. “The idea
 16 behind § 1404 (a) is that where a ‘civil action’ to vindicate a wrong --however
 17 brought in a court-- presents issues and requires witnesses that make one District
 18 Court more convenient than another, the trial judge can, after findings, transfer the
 19 whole action to the more convenient court.” *Continental Grain Co. v. Barge FBL-*
 20 *585*, 364 U.S. 19, 26 (1960).

21 **1. THIS COURT SHOULD ISSUE AN ORDER TRANSFERRING THIS**
 22 **ACTION TO THE EASTERN DISTRICT MISSOURI BECAUSE**
 23 **THE STATUTORY REQUIREMENTS ARE MET**

24 Determining when transfer is appropriate is a two-prong test. “Section
 25 1404(a) ‘requires two findings -- that the district court is one where the action
 26 ‘might have been brought’ and that the ‘convenience of parties and witnesses in the
 27 interest of justice’ favor transfer....” *Hatch v. Reliance Ins. Co.*, 758 F.2d 409, 414
 28 (9th Cir. 1985). Both findings are inescapable in this matter.

1 **a. The First Prong is Satisfied Because this Action “Might Have**
 2 **Been Brought” in the Eastern District of Missouri**

3 “In determining whether an action ‘might have been brought’ in a district, the
 4 court looks to whether the action initially could have been commenced in that
 5 district.” *Hatch*, 758 F.2d at 414. This case initially could have been commenced in
 6 the Eastern District of Missouri because that is a “judicial district in which [the]
 7 defendant resides. . .” 28 U.S.C. § 1391(b)(1). Defendant’s headquarters, only
 8 office, and state of incorporation is in Arnold, Missouri, located in the Eastern
 9 District. 28 U.S.C. § 1391(c)(2). *See* Plotsker Decl. ¶¶3. The first prong of the
 10 statutory test is therefore satisfied because Plaintiff could have elected to file this
 11 action in the Eastern District of Missouri.

12 **b. Convenience of Parties and Witnesses In the Interest of Justice**
 13 **Favor Transfer to the Eastern District of Missouri**

14 The Ninth Circuit has identified a non-exclusive list of factors district courts
 15 should consider when analyzing the second prong:

16 “‘As part of this inquiry, the court should consider private and public interest
 17 factors affecting the convenience of the forum. Private factors include the
 18 ‘relative ease of access to sources of proof; availability of compulsory process
 19 for attendance of unwilling, and the cost of obtaining attendance of willing,
 20 witnesses; possibility of view of premises, if view would be appropriate to the
 21 action; and all other practical problems that make trial of a case easy,
 22 expeditious and inexpensive.’ Public factors include ‘the administrative
 23 difficulties flowing from court congestion; the “local interest in having
 24 localized controversies decided at home”; the interest in having the trial of a
 25 diversity case in a forum that is at home with the law that must govern the
 26 action; the avoidance of unnecessary problems in conflict of laws, or in the
 27 application of foreign law; and the unfairness of burdening citizens in an
 28 unrelated forum with jury duty.’”

1 *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986)
 2 [internal citations omitted]; also see *Jones v. GNC Franchising, Inc.*, 211 F.3d 495,
 3 498-99 (9th Cir. 2000).

4 The most pertinent factors are analyzed below.

5 **i. Relative Ease of Access to Sources of Proof**

6 The primary eyewitnesses, as discussed in greater detail below, reside in
 7 Ohio, Connecticut, Michigan, Canada, and Colorado. *See* Plotsker Decl. ¶15. Jim
 8 Alloway, the individual on whom Plaintiff focuses his allegations, resides in Ohio.
 9 *See* Complaint ¶¶24, 25, 27, 30, 31, 37; *See* Plotsker Decl. ¶10. The USCA
 10 headquarters are in Missouri, and the USCA Officers reside in New Hampshire,
 11 Ohio, California, and Idaho. *See* Plotsker Decl. ¶¶3, 12. The members of the USCA
 12 Judges Committee reside in New Hampshire, Georgia, New Jersey, Kentucky, and
 13 California. *See* Plotsker Decl. ¶12. USCA's only three employees reside in
 14 Missouri and Illinois. *See* Plotsker Decl. ¶9. The events giving rise to Plaintiff's
 15 claim occurred in Spencer, Massachusetts. *See* Plotsker Decl. ¶16. Ease of access to
 16 sources of proof increases exponentially should the court transfer this matter to
 17 Missouri.

18 **ii. Availability of Compulsory Process for Attendance**
 19 **of Unwilling, and Cost of Obtaining Attendance of**
 20 **Willing, Witnesses**

21 The convenience of witnesses is "often the most important factor in an §
 22 1404(a) transfer motion" and "in establishing inconvenience to witnesses, the
 23 moving party must name the witnesses, state their location, and explain their
 24 testimony and its relevance." *Costco Wholesale Corp. v. Liberty Mut. Ins. Co.*, 472
 25 F.Supp.2d 1183, 1193 (S.D. Cal. 2007). The court should consider the importance
 26 of the witnesses and not just the number [*Saleh v. Titan Corp.*, 361 F.Supp.2d 1152,
 27 1165 (S.D. Cal. 2005)], and the location of those witnesses who have "material,
 28 first-hand knowledge regarding the seminal issues in this case" weigh in favor of the

1 forum where those witnesses reside. *Costco*, 472 F.Supp.2d at 1162.

2 Defendant has identified eight (8) witnesses with relevant knowledge of the
3 incident and/or Plaintiff's experience as a member of the USCA. *See* Plotsker Decl.
4 ¶17. At least six (6) of these critical witnesses (Jim Alloway, Vadim Plotsker, Ann
5 Marie Chaffin, Raino Fluegge, Don Yelle, Sean Murphy) live in, or relatively near,
6 Missouri, and are thus beyond the reach of subpoenas for a trial in California. *See*
7 Plotsker Decl. ¶¶11, 16-19.

8 Each of these witnesses has material, first-hand knowledge regarding the
9 seminal issues in this case. First, the alleged harasser, Jim Alloway, who has known
10 Plaintiff for over six years, witnessed the incident, witnessed Plaintiff's behavior
11 before and after the incident, and co-authored the disciplinary charge against
12 Plaintiff. *See* Plotsker Decl. ¶¶12, 18. Second, eye witnesses Ann Marrie Chaffin
13 and Raino Fluegge, Performance Judges who were, alongside Plaintiff, judging the
14 competition where the alleged incident occurred. *See* Plotsker Decl. ¶19. Further,
15 Vadim Plotsker, the President of USCA, who received nearly contemporaneous
16 reports of the alleged incident, and is intimately familiar with the policies and
17 procedures of the organization, which the Plaintiff calls into question. *See*
18 Complaint ¶¶10-19; *See* Plotsker Decl. ¶1. Finally, eye witnesses Don Yelle and
19 Sean Murphy, two individuals working as "Helpers" at the competition where the
20 alleged incident occurred, and co-authors of the disciplinary charge against Plaintiff.
21 *See* Plotsker Decl. ¶20.

22 Since the primary source of evidence in this matter will be witness testimony,
23 subpoena authority is of utmost importance. Subpoenas may command a witness to
24 attend trial only "within 100 miles of where the person resides, is employed, or
25 regularly transacts business in person" or, if the witness is an officer of a party,
26 "within the state where the person resides, is employed, or regularly transacts
27 business in person...." Fed. R. Civ. P. 45(c)(1). While out-of-state subpoena
28 authority may be extended to a party's employees, non-party affiliated witnesses can

1 be compelled to appear only by valid subpoena within the geographic limits set forth
2 in Fed. R. Civ. P. 45.

3 Even if these witnesses would be willing to testify without the need for
4 subpoenas, the contrast in costs is stark if the action is venued in California instead
5 of Missouri. The costs for at least six witnesses (there may be more) to travel from
6 the Midwest and East Coast to California would be significant, whereas Plaintiff is
7 one of only three witness who lives in California. Transporting these essential
8 witnesses to California for trial would significantly, and unfairly, increase the costs
9 of litigation.

10 While Plaintiff may argue trial in California would be more convenient for
11 him, the “convenience of the plaintiff is not important to the balancing process....”
12 *Commodity Futures Trading Com. v. Savage*, 611 F.2d 270, 279 (9th Cir. 1979).
13 Even if the Court gives weight to plaintiff’s chosen forum, this factor alone is *not*
14 sufficient to prevent a transfer. *Pac. Car & Foundry Co. v. Pence*, 403 F.2d 949,
15 954 (9th Cir. 1968). “If the operative facts have not occurred within the forum and
16 the forum has no interest in the parties or subject matter, [the plaintiff’s] choice is
17 entitled to only minimal consideration.” *Lou v. Belzberg*, 834 F.2d 730, 739 (9th
18 Cir. 1987). “It is often said that the plaintiff may not, by choice of an inconvenient
19 forum, ‘vex,’ ‘harass,’ or ‘oppress’ the defendant by inflicting upon him expense or
20 trouble not necessary to his own right to pursue his remedy.” *Gulf Oil Corp. v.*
21 *Gilbert*, 330 U.S. 501, 508, 67 S. Ct. 839, 843 (1947).

22 This Court should give Plaintiff’s choice of forum minimal weight, if any,
23 because the incidents giving rise to the operative facts occurred in both Missouri and
24 Massachusetts, and the Northern District of California has no interest in the parties
25 or subject matter.

26 **iii. Administrative Difficulties flowing from Court** 27 **Congestion**

28 The court can also weigh the congestion of the two venues in evaluating a

1 motion to transfer venue. In this case, the Northern Central District is substantially
2 more burdened when compared to the Eastern District of Missouri. In the 12-month
3 period ending March 31, 2020, the Northern District of California had 8,788 filings
4 commence whereas the Eastern District of Missouri had only 3,481.²

5 The burden on each judge is substantially greater in California. Each of the 14
6 judges in the Northern District of California is assigned, on average, 627 actions per
7 year, whereas each of the 9 judges in the Eastern District of Missouri is assigned an
8 average of 386 actions. Not only is Missouri more convenient to the parties and to
9 all pertinent witnesses, it is also more convenient to the courts themselves.
10 California has only a limited interest in this matter and is markedly overburdened
11 with other cases.

12 **C. CONCLUSION**

13 Based on the foregoing Defendant respectfully requests this Court enter an
14 Order transferring this case to the Eastern District of Missouri because it would
15 serve the convenience of the parties and witnesses and would be in the interests of
16 justice.

17
18 DATED: October 27, 2020

JOHN L. BARBER
JULIE W. O'DELL
LAUREN E. WERTHEIMER
LEWIS BRISBOIS BISGAARD & SMITH LLP

21
22
23 By: 

24 LAUREN E. WERTHEIMER
25 Attorneys for Defendant UNITED
SCHUTZHUND CLUBS OF AMERICA

26
27 ² <https://www.uscourts.gov/statistics/table/c-1/federal-judicial-caseload-statistics/2020/03/31>

FEDERAL COURT PROOF OF SERVICE

Nagy v. United Schutzhund Clubs of America, et al.
3:19-cv-08459-CRB

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to the action. My business address is 633 West 5th Street, Suite 4000, Los Angeles, CA 90071. I am employed in the office of a member of the bar of this Court at whose direction the service was made.

On October 27, 2020, I served the following document(s): DEFENDANT UNITED SCHUTZHUND CLUBS OF AMERICA'S NOTICE OF MOTION AND MOTION TO TRANSFER VENUE

I served the documents on the following persons at the following addresses (including fax numbers and e-mail addresses, if applicable):

James Mills	Attorneys for Plaintiff
Law Offices of James Mills	
1300 Clay Street, Suite 600	
Oakland, CA 94612	
Tel: 510-521-8748	
Email: james@jamesmillslaw.com	

The documents were served by the following means:

☒ (BY COURT'S CM/ECF SYSTEM) Pursuant to Local Rule, I electronically filed the documents with the Clerk of the Court using the CM/ECF system, which sent notification of that filing to the persons listed above.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed on October 27, 2020, at Los Angeles, California.



Lily Hernandez